



Paper 17

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**JAN 25 2007**

**OFFICE OF PETITIONS**

**ON PETITION**

In re Application of  
Dillis V. Allen et al.  
Application No. 09/820,568  
Filed: March 29, 2001  
Attorney Docket No. G-38

This is a decision on the petition filed January 30, 2006, to withdraw the holding of abandonment under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition under 37 CFR 1.181(b) is **GRANTED**.

In response to an amendment filed November 23, 2004, an Office Action noting that the amendment was non-responsive was mailed February 4, 2004. The February 4, 2004 Office Action set a one month period for reply. No response having been filed thereto, the application became abandoned March 8, 2004. Petitioner argues non-receipt of the Office Action and provides copies of the docket report and the file jacket wherein receipt of the Office Action mailed February 4, 2004 would have been filed, had it been received.

In that the statement from the petitioner and the exhibits from the docket record and file jacket for the instant matter show no entry indicating receipt of the Office Action mailed February 4, 2004, it is apparent that it was not received. The evidence submitted corroborates non-receipt of the Office Action.

In view of the facts set forth in the petition, it is concluded that the Office Action mailed February 4, 2004 was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and no petition fee is due.

A response to the Office Action mailed February 4, 2004 was filed January 30, 2006 with the instant petition. This matter is being referred to Technology Center 3711 for treatment of the response, supplemental amendment, filed February 4, 2004, as appropriate.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

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